IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE J.B.KOSHY
&
THE HONOURABLE MR. JUSTICE K.P.BALACHANDRAN

MONDAY, THE 4TH JUNE 2007 / \4TH JYAISHTA 1929

RCRev..No. 167 of 2007

RCA.135/2002 of RENT CONTROL APPELLATE AUTHORITY, THALASSERY
RCP.142/2000 of RENT CONTROL COURT, KANNUR

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REVISION PETITIONER/APPELLANT/2ND RESPONDENT:

CHERUVEETTIL THAZHE PURUSHOTHAMAN
S/O.KUNHIRAMAN, AGED 70 YEARS
RESIDING AT AHARI KAVU, KIZHUNNAPPARA
THOTTADA, KANNUR-7

BY ADV. SRI.N.NAGARESH
SRI.K.BABU

RESPONDENTS/RESPONDENTS/PETITIONER& LRS OF 1ST RESPONDENT:

1. E.V.ROSNA, D/O.LATE K.K.ABDUL HAMEED
AGED 30 YEARS, HOUSE WIFE, RESIDING AT
KANNUR 1 AMSOM, CAMP BAZAR CENTRAL WARD
KANNUR-1

2. C.T.KAMALAKSHMI, W/O. LATE C.T.KUNHAMBU,
AGED 65 YEARS, RESIDING AT CHERUVEETTIL
HOUSE, P.O.KIZHUNNA, KANNUR-7

3. C.T.SURESHAN, AGED 47 YEARS
S/O.LATE C.T.KUNHAMBU, DO. DO.

4. C.T.DINESAN, S/O.LATE C.T.KUNHAMBU
AGED 40 YEARS, DO. DO.

5. C.T.LATHA, D/O.LATE C.T.KUNHAMBU,
AGED 35 YEARS, DO. DO.

6. C.T.LEKHA, D/O. LATE C.T.KUNHAMBU
AGED 30 YEARS, RESIDING AT CHERUVEETTIL HOUSE
P.O.KIZHUNNA, KANNUR-7

7. C.T.AKHILESHAN, S/O.LATE C.T.KUNHAMBU
AGED 25 YEARS, DO. DO.

THIS RENT CONTROL REVISION HAVING COME UP FOR ADMISSION ON 04/06/2007, THE COURT ON THE SAME DAY PASSED THE FOLLOWING:

J.B.Koshy & K.P.Balachandran, JJ.

R.C.R.No. 167 of 2007

ORDER

Balachandran, J.

This revision is filed by the second counter petitioner in R.C.P.No.142/00 on the file of the Rent Control Court, Kannur. Petition for eviction was filed by the first respondent under Sections 11 (2)(b) and 11(3) of the Kerala Buildings (Lease and Rent Control) Act, 1965 (hereinafter referred to as 'the Act'). According to the first respondent/ landlady, the building was let out on a monthly rental of Rs.80/- and that was subsequently enhanced to Rs.325/-. Ever after 30.9.1998, the petitioner had not paid rents and the rents are continuously in arrears. It is also alleged that the first counter petitioner is the tenant. But, the person, who is actually occupying the scheduled premises, is the second counter petitioner, who is the brother of the first counter petitioner and

that the first respondent has not accepted the second counter petitioner as a tenant, though she was aware about his occupation. The Rent Control Court found that the rate of rent is Rs.80/- per month and that the rents were not paid ever after 30.9.1998. It was also found that the need advanced by the landlady for the scheduled building to conduct footwear business for her husband is bona fide and genuine. Consequently, eviction was ordered both under Sections 11(2)(b) and 11(3) of the Act.

2. The first counter petitioner filed R.C.A. No.136/02 and the second counter petitioner filed R.C.A.No.135/02 before the Rent Control Appellate Authority. By a common judgment, the appellate authority dismissed both the appeals, confirming the order of eviction passed by the Rent Control Court under Sections 11(2)(b) and 11(3) of the Act, clarifying that the rate of rent is only Rs.57.35 as shown in Exhibit B1. It was also found that the second counter petitioner, who is conducting

business in the scheduled premises, is not the tenant and however, even assuming that he is the tenant, he has not established either the first or second limb of second proviso to Section 11(3) of the Act. The first counter petitioner, who filed R.C.A.No.136/02, died pending appeal and his legal heirs were impleaded in the appeal. The legal heirs of the first counter petitioner have not preferred any revision challenging the order dismissing the said appeal. It is only the second counter petitioner, who is found to be not the tenant, who has preferred this revision.

3. It is contended before us by the learned counsel for the petitioner/2nd counter petitioner that the husband of the first respondent is not alleged and proved to be a dependent on her and that, therefore, eviction under Section 11(3) of the Act should not have been ordered. He has also relied on the decision of this Court in **Ismail v. Kesavan** (2004 (2) KLT 56) to contend that dependency on the landlady must be specifically

pleaded so as to get the tenant an opportunity to disprove the dependency. The contention is devoid of any merit. The need for conduct of a footwear business desired to be conducted by the husband of the first respondent/landlady is for the benefit of the landlady herself. In such a case, there is no need for the first respondent to allege that her husband is dependent on her in the matter of accommodation for his business.

4. No argument was advanced before us contending that the petitioner/second counter petitioner is the real tenant and not the first counter petitioner. When the petitioner is not the tenant, as found by the authorities below, he has no locus standi at all to prefer a revision without the junction of the legal heirs of the first counter petitioner, who have not preferred any revision impugning the correctness of the judgment passed against them in R.C.A.No.136/02. No argument was also advanced before us claiming the benefit of second proviso to Section 11(3) of the Act and

obviously, the petitioner/2nd counter petitioner, who is not the tenant, cannot claim also the benefit of second proviso to Section 11(3) of the Act.

5. It is seen that the contentions advanced were properly appreciated by the authorities below on the basis of the evidence adduced in the case. There is no reason for this Court to interfere with the said concurrent findings in revision. This revision has only to be dismissed. We do so.

6. Finally, it is urged before us by the learned counsel for the petitioner that the revision petitioner be granted three months time to vacate and surrender vacant possession of the scheduled building to the first respondent/land lady. The petitioner, who is the brother of the tenant and who, to the knowledge of the first respondent/landlady, was conducting business in the scheduled building, is granted three months time to surrender vacant possession of the scheduled building to the first respondent/landlady on

condition that all rents in arrears are to be deposited before the Execution Court positively within one month from today and affidavit is filed before the execution court reporting such payment with evidence in proof thereof and undertaking unconditionally to surrender vacant possession of the scheduled building on or before 4.9.2007. In case of failure to comply with the above directions, the petitioner shall not be entitled to continue in occupation of the scheduled building for the said three months and he shall be liable to be evicted immediately on the expiry of the aforesaid one month.

(J.B.Koshy, Judge)

4th June, 2007

(K.P.Balachandran, Judge)

tkv